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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

JOSEPH BUDDENBERG,  
MARYAM KHAJAVI,  
NATHAN POPE, A/K/A NATHAN KNOERL,  
ADRIANA STUMPO,

Defendants.

CR 09-263 RMW

UNITED STATES' OPPOSITION  
TO MOTIONS TO SUPPRESS

Date: June 7, 2010  
Time: 9:00 a.m.  
Court: Hon. R. Whyte

INTRODUCTION

Defendants move to suppress evidence seized pursuant to a state search warrant executed on February 24, 2008 (Docket Entries 135, 144, and 145), and evidence seized pursuant to a federal search warrant executed on August 8, 2008 (Docket Entry 143). For the reasons discussed below, defendants' motions to suppress bandanas, a bullhorn, and a piece of paper and envelope containing the names of professors at the University of California at Santa Cruz seized on February 24, 2008, from defendant Khajavi's car and her shared residence should be denied. At

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1 this time, the government does not intend on offering into evidence in its case in chief any other  
2 evidence seized on February 24, 2008, or any evidence seized pursuant to the August 8, 2008,  
3 search warrant. Therefore, the Court need not decide the defendants' motions to suppress  
4 evidence from the August 2008 search. Defendant Buddenberg also moves to suppress evidence  
5 seized on October 24, 2007, March 30, 2008, and December 18, 2008 (Docket Entry 125). His  
6 motion should be denied with respect to the March 30, 2008, and December 18, 2008, searches.  
7 At this time, the government does not intend to offer into evidence in its case in chief any items  
8 seized from Buddenberg on October 24, 2007. Therefore, the Court need not decide that motion  
9 either. The government will promptly notify the Court and the parties if the scope of its  
10 anticipated trial evidence changes so that the remaining issues raised by the defendants with  
11 respect to these searches can be litigated.

## 12 ARGUMENT

### 13 I. Evidence From the February 24, 2008, State Search Warrant

#### 14 A. The underlying criminal activity

15 In substance, the affidavit alleges that on February 24, 2008, at approximately 12:37 p.m., a  
16 victim reported to law enforcement that five to six masked animal rights activists had attempted  
17 to enter his residence in Santa Cruz. Law enforcement responded to a 911 call with a woman  
18 screaming and children crying in the background. When law enforcement arrived at the address,  
19 the victim reported that he saw the individuals after his doorbell rang and there was a loud knock  
20 at the door. The individuals were standing on his front porch, dressed in all black. After warning  
21 his wife and children to stay in the back of the house, the victim heard the individuals banging  
22 violently on the glass pane of his front door, twisting the door handle, and shoving the door in its  
23 frame. The victim opened the front door, told the individuals to leave, and then had a physical  
24 altercation with one of the individuals. The victim also reported that an individual yelled of "go  
25 back to your murdering wife," and "we're gonna get you." The victim then followed the five to  
26 six masked individuals on foot as they fled from his house. Three to four of the individuals  
27 entered a white Chevy four-door bearing California license plate number 5LEH590. Those  
28

1 individuals then picked up the other two individuals a few blocks away. At that point, the victim  
2 lost sight of the car. *See* Declaration of Elise Becker, Exh. 3.

3 B. Evidence seized from 724 Riverside, Santa Cruz, California

4 The defendants argue that the February 24, 2008, search warrant of Khajavi, Pope, and  
5 Stumpo's residence was not based on probable cause, was overbroad, and lacking in particularity.  
6 The defendants' motions to suppress evidence seized as a result of this search should be denied  
7 because the affidavit set forth sufficient facts for the issuing court to find probable cause that  
8 evidence relating to trespass, assault, and unlawful animal rights activities committed at the  
9 home of a University of California at Santa Cruz professor hours before the execution of a state  
10 search warrant would be found at Khajavi's residence. At this time, the government only intends  
11 to offer into evidence in its case in chief the following items: one bandana recovered from a  
12 backpack in a common area; one bandana recovered from an uncharged roommate's room; and a  
13 letter and envelope bearing the names and addresses of bio-medical researchers- including some  
14 previously targeted by animal rights protests- that was found in the same backpack as the  
15 bandana located in the common area. Therefore, the government submits that the Court need not  
16 decide whether or not there was probable cause to search Nathan Pope's room, or to seize  
17 computers, telephones, books, or any of the other items challenged by the defendants.

18 The issuing court properly determined that there was probable cause to search Khajavi's  
19 residence. "The affidavit need only 'enable the magistrate to conclude that it would be  
20 reasonable to seek the evidence in the place indicated by the affidavit.'" *United States v. Taylor*,  
21 716 F.2d 701, 706 (9th Cir. 1983) (quoting *United States v. Hendershot*, 614 F.2d 648, 654 (9th  
22 Cir. 1980)). That determination should be reviewed "in a common sense and realistic fashion."  
23 *United States v. Dubrofsky*, 581 F.2d 208, 212 (9th Cir. 1978). A warrant will be upheld even  
24 when there is no direct evidence that the items to be seized are at the location. Indeed, "a warrant  
25 may be upheld when the nexus between the items to be seized and the place to be searched rests  
26 not upon direct observation, but on the type of crime, nature of the items, and normal inferences  
27 where a criminal would likely hide contraband." *Id.* at 213. *See also United States v. Hargus*,  
28 128 F.3d 1358, 1362 (10th Cir. 1997) (no direct evidence or personal knowledge required to

1 establish probable cause to believe items sought are at search location); *United States v. Angulo-*  
2 *Lopez*, 791 F.2d 1394, 1399 (9th Cir. 1986). Furthermore, a search warrant for the entire  
3 residence was appropriate based on the number of individuals involved in the incident, the three  
4 names on the unit's mailbox, the nature of the items to be seized, and the nature of the unlawful  
5 acts. *See United States v. Ayers*, 924 F.2d 1468, 1480 (9th Cir. 1991) (search of entire single  
6 family home appropriate notwithstanding information regarding illegal activities of only one  
7 occupant).

8 In this case, the affidavit sets forth sufficient facts supporting probable cause to believe that  
9 evidence of trespass, assault, and unlawful animal rights activities would be found at Khajavi's  
10 residence. The police traced the car's license plate to its registered owner, Khajavi's mother.  
11 Khajavi's mother told the police that her daughter had the car, that she was a student at  
12 University of California at Santa Cruz, and that she recently moved to 724 Riverside in Santa  
13 Cruz. The affiant also confirmed Khajavi's residence by looking at the names on the unit's  
14 mailbox and speaking with Khajavi's landlord, both of which evidenced that Khajavi lived at the  
15 residence with at least one other individual. Furthermore, the affiant, who states that he has  
16 investigated hundreds of cases involving crimes against persons and property, believed that  
17 evidence would likely be found at Khajavi's residence. Based on all these facts, the issuing court  
18 properly found probable cause to believe that evidence of the crimes on February 24, 2008,  
19 would be found at 724 Riverside. The affiant needed neither personal knowledge nor direct  
20 evidence that the items would be found at the residence; as set forth above, the issuing court had  
21 authority to make the probable cause determination based on reasonable inferences from the  
22 totality of circumstances in the affidavit. *See United States v. Seybold*, 726 F.2d 502, 504 (9th  
23 Cir. 1984) (application of totality of the circumstances test); *see also United States v. Barros*, 340  
24 Fed. Appx. 509 (C.A. 10 (N.M.), 2009) (unpublished) (probable cause to search residence of  
25 pizza store robber based on eyewitness description of suspect matching defendant's physical  
26 description seen fleeing robbery in car similar to defendant's car and license plate of car  
27 registered to defendant). Under the totality of the circumstances test, here, the issuing court  
28 properly exercised its discretion in finding probable cause to search Khajavi's residence.

1 The only items the government seeks to admit in its case in chief are the bandanas and paper  
2 and envelope with the names of University of California at Santa Cruz researchers seized from a  
3 common area and the roommate's bedroom. These items were lawfully seized under the warrant.  
4 Indeed, the search warrant was neither overbroad nor lacking in particularity with respect to the  
5 seizure of "masks, bandanas, disguises, dark clothing, bullhorn, collapsible umbrella and chalk."  
6 These items are narrowly defined, and are directly related to the incident under investigation.  
7 The defendants do not challenge this particular section of the warrant, and these items should not  
8 be suppressed.

9 The search warrant also allowed the seizure of "rosters or lists of University of Santa Cruz  
10 California faculty members who they inten[d] to target." The affidavit provides a detailed  
11 description of four incidents committed in the name of animal rights against three different  
12 University of California at Santa Cruz faculty members. Three of those incidents occurred on  
13 February 10, 2008, and the fourth occurred on February 24, 2008. The victim of the February  
14 24, 2008, incident was also a victim in a February 10, 2008, incident. The first three incidents  
15 were similar in nature; they all involved chalkings of "Murderer," "Animal Abuser," and other  
16 words of a similar nature. The February 24, 2008, incident involved the physical confrontation  
17 with one of the faculty member's husband, and the yelling of "go back to your murdering wife,"  
18 and "we're gonna get you." Based on the three similar incidents on February 10, 2008, and the  
19 physical confrontation on February 24, 2008, there was probable cause to believe that evidence  
20 relating to past and future targets of animal rights protests against University of California Santa  
21 Cruz faculty members would be found in the getaway car and in the residence of the driver of the  
22 getaway car. While the warrant does not limit the collection of this evidence to a specific time  
23 period, any evidence of past or contemplated acts against the researchers would "aid in the  
24 particular apprehension or conviction" relating to unlawful acts committed against the faculty  
25 members. *Warden v. Hayden*, 387 U.S. 294, 307 (1967).

26 Based on all these facts, law enforcement also had a good faith basis to rely on the search  
27 warrant. *See United States v. Crews*, 502 F.3d 1130, 1135-39 (9th Cir. 2007) (evidence not  
28 suppressed based on officers' good faith reliance on search warrant affidavit which was neither

misleading nor “so lacking in indicia of probable cause as to render reliance upon it objectively unreasonable.”). Furthermore, if the Court finds that sections of the warrant on which the government does not rely are overbroad, it should not invalidate the entire warrant. *See United States v. Clark*, 31 F.3d 831, 836 (9th Cir. 1994) (“The remedy for an overbroad search warrant is suppression of the seized evidence. The court need suppress, however, only those items seized pursuant to the invalid portion of a search warrant.”). *See also United States v. Washington*, 797 F.2d 1461, 1473 (9th Cir. 1986) (“Any articles seized pursuant to valid portions of the warrant need not be suppressed.”).

C. Evidence seized from defendant Khajavi’s car

The defendants’ motion to suppress evidence seized from Khajavi’s car pursuant to the search warrant should also be denied. The officers did not need a search warrant to search Khajavi’s car. Under the automobile exception to the Fourth Amendment, officers can search a car without a warrant if there is probable cause to believe it contains evidence of criminal activity. *United States v. Ross*, 456 U.S. 798, 825 (1982). As set forth above, the victim reported to law enforcement that he followed five to six masked individuals fleeing from his house in a white Chevy four-door bearing license plate number 5LEH590. Based on this information, there was probable cause to believe that evidence of the incident would be found in the car seen fleeing the scene. While law enforcement did not need a search warrant to search the car, here, they obtained one before the car was even located. As a result of the search, four bandanas and a bullhorn were recovered from the car.

D. Defendant Khajavi’s identity

Khajavi also moves to suppress her identity as a result of law enforcement’s initial encounter with her before they obtained the search warrant for 724 Riverside. As set forth in the affidavit, law enforcement attempted to locate Khajavi at 724 Riverside before they sought a search warrant. Law enforcement first knocked on the door of the residence; there was no response. Law enforcement went to a side door of the residence and knocked again; there was no response. Law enforcement then tried the door and discovered that the door was unlocked. Law enforcement pushed on the door knob, causing the door to open slightly. The affiant announced

1 his presence in a loud voice. At this time a white female with brown hair in dreadlocks, not  
2 identified as Khajavi in the affidavit, walked towards the door; she told affiant to get a search  
3 warrant, and she closed the door. At this point of the investigation, law enforcement knew from  
4 Khajavi's mother that Khajavi resided at 724 Riverside, but they had not yet obtained a search  
5 warrant for her residence.

6 The Court need not decide the issue of the legality of this initial encounter because the  
7 Supreme Court has held that one's identity cannot be suppressed. *See United States v. Ortiz-*  
8 *Hernandez*, 427 F.3d 567, 577 (9th Cir. 2005) (quoting *INS v. Lopez-Mendoza*, 468 U.S. 1032,  
9 1039 (1984)). Furthermore, the affidavit does not identify the slender female with dreadlocks as  
10 Khajavi, and nothing in the affidavit relies on Khajavi's physical presence at the location to  
11 establish probable cause that she resided at the location. That the affidavit mentions an initial  
12 encounter with a woman, whom law enforcement later identified as Khajavi after obtaining the  
13 search warrant, does not taint either the warrant or the evidence. *See United States v. Vasey*, 834  
14 F.2d 782, 788 (9th Cir. 1987) ("The mere inclusion of tainted evidence in an affidavit does not,  
15 by itself, taint the warrant or the evidence seized pursuant to the warrant. A reviewing court  
16 should excise the tainted evidence and determine whether the remaining, untainted evidence  
17 would provide a neutral magistrate with probable cause to issue a warrant." (internal citations  
18 omitted)). Accordingly, the fact that Khajavi was present at the residence at the time of the  
19 execution of the search warrant should not be suppressed.

## 20 **II. Defendant Buddenberg's Motion to Suppress**

### 21 **A. Evidence from October 24, 2007**

22 Defendant Buddenberg moves to suppress evidence seized on October 24, 2007. On that  
23 date, law enforcement received information from a bio-medical researcher at the University of  
24 California at Berkeley that an individual reported to her that a man was posting flyers in the  
25 Downtown Berkeley area containing personal information relating to the professor. Law  
26 enforcement contacted the person reporting the incident, and proceeded to the location of the  
27 flyers. An individual then approached law enforcement and pointed out Buddenberg who was  
28 half a block away. This individual indicated that he was willing to make a citizen's arrest of



1 Buddenberg for posting the flyers. Law enforcement approached Buddenberg and searched his  
2 bag. The individual who initially indicated that he would make a citizen's arrest then changed  
3 his mind, and law enforcement did not arrest Buddenberg. *See* Declaration of Elise Becker, Exh.  
4 4. At this time, the government does not intend to offer into evidence in its case in chief any  
5 items seized from Buddenberg on October 24, 2007.

6 B. Evidence from March 30, 2008

7 Defendant Buddenberg also moves to suppress evidence from an incident on March 23, 2008.  
8 Based on the defendant's arguments, it appears that the defendant meant to challenge a car  
9 inventory search that occurred on March 30, 2008. On that date, the defendant was observed  
10 driving a vehicle registered to another person. Law enforcement, who was familiar with  
11 Buddenberg from previous encounters and knew him to be involved in home demonstrations,  
12 knew that Buddenberg did not have a valid driver's license at the time. Law enforcement also  
13 recognized the car as being used in animal rights activities. Law enforcement stopped the car in  
14 furtherance of its investigation into an act of vandalism that had just occurred at a University of  
15 California at Berkeley bio-medical faculty member's home nearby. Law enforcement issued  
16 Buddenberg a citation for violations of California Vehicle Code Section 12500 (driving without a  
17 valid driver's license), Section 16028a (driving without valid registration), and Section 22651(p).  
18 Since the car's registered owner was not present, the car was impounded pursuant to California  
19 Vehicle Code Section 22651(p) and the car was searched pursuant to Berkeley Police  
20 Department's tow policy. *See* Declaration of Elise Becker, Exh. 5. During an inventory search  
21 of the car, law enforcement found the following items: "stop Vivisection" signs, a mega-phone,  
22 and typed fliers relating to University of California at Berkeley bio-medical researcher Jack  
23 Gallant. The Supreme Court has unequivocally held that inventory searches of cars prior to and  
24 subsequent to impoundment are lawful searches that do not require search warrants. *See*  
25 *Colorado v. Bertine*, 479 U.S. 367 (1987) (warrantless inventory search prior to lawful  
26 impoundment) and *South Dakota v. Opperman*, 428 U.S. 364 (1976) (warrantless inventory  
27 search after lawful impoundment). Accordingly, defendant Buddenberg's motion to suppress the  
28 evidence seized from the car pursuant to a lawful inventory search should be denied.



1 C. Evidence from December 18, 2008

2 Lastly, defendant Buddenberg moves to suppress evidence seized on December 18, 2008,  
3 incident to his arrest on a warrant issued in connection with a trespassing violation that occurred  
4 on July 4, 2008. On July 10, 2008, a victim reported to law enforcement that an individual had  
5 trespassed on her property at approximately 10:30 p.m. on July 4, 2008, and that she had video  
6 surveillance footage of the trespass. The victim, whose husband is a bio-medical associate  
7 professor at the University of California at Berkeley, stated that she recognized the person  
8 trespassing from past animal rights incidents at her home, stating he was “possibly Buddenberg.”  
9 Law enforcement reviewed the video footage and determined that Buddenberg had trespassed on  
10 the victim’s private property on July 4, 2008, by entering her driveway. Law enforcement  
11 observed a “No Trespassing/Private Property” sign posted on a utility box at the entrance to the  
12 victim’s driveway. Law enforcement also recognized Buddenberg from prior animal rights  
13 activities. Entering property on which the owner has posted a no trespassing sign is unlawful  
14 under Berkeley Municipal Code 13.52.010 and California Penal Code 647(h). Based on these  
15 facts, law enforcement sought an arrest warrant for Buddenberg. On December 18, 2008, law  
16 enforcement saw Buddenberg at a park, ran a records check, and arrested him on the outstanding  
17 warrant. Buddenberg had a backpack on his person at the time of arrest. After Buddenberg was  
18 transported to Berkeley jail, the arresting officer searched his bag and seized various items,  
19 including a bicycle lock, a knit hat, tubes of super glue, gloves, papers, a photocopied UC  
20 Berkeley ID card, and a photocopied UC Santa Cruz ID card. *See* Declaration of Elise Becker,  
21 Exh. 6. Buddenberg’s backpack was searched at the jail, as part of the routine booking process.  
22 The arresting officer seized the contents of the backpack as evidence. The jail’s booking process  
23 as it relates to searches of a prisoner’s property and the seizure of property as evidence is also  
24 attached to the Declaration of Elise Becker at Exhibit 6. The evidence seized from this search,  
25 which was conducted after Buddenberg’s arrest and after he was transported to the jail, was and  
26 would inevitably have been inventoried at the jail. The Supreme Court held in *Illinois v.*  
27 *Lafayette* that a routine inventory search during the booking process is an exception to the  
28 warrant requirement. 462 U.S. 640, 648 (1983). Evidence that would have been discovered

1 during a valid inventory search is also admissible. *See United States v. Andrade*, 784 F.2d 1431,  
2 1433 (9th Cir. 1986) (drugs found in garment bag searched about an hour after arrest but before  
3 booking process admissible under inevitable discovery doctrine because inventory of bag during  
4 routine booking procedure would have resulted in discovery of drugs).

5 **CONCLUSION**

6 For the reasons set forth above, the defendants' motions to suppress evidence from the  
7 February 24, 2008, search of 724 Riverside and defendant Khajavi's car, as well the March 30  
8 and December 18, 2008, searches relating to defendant Buddenberg should be denied.

9  
10 Dated: May 21, 2010

Respectfully submitted,

11 JOSEPH P. RUSSONIELLO  
12 UNITED STATES ATTORNEY

13 /s/

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